HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICEC.V. NAGARJUNA REDDY

Writ Appeal No.1230 of 2006
And
Writ Petition No.18731 of 2006

Writ Appeal No.1230 of 2006

Between:

Smt.Maddineni Rathamma

... Appellant

And

Regional Joint Commissioner,
Guntur Zone, Endowments Department,
Guntur and others

... Respondents

Writ Petition No.18731 of 2006

Between:

Smt.Maddineni Rathamma

... Appellant

And

Regional Joint Commissioner,
Guntur Zone, Endowments Department,
Guntur and others

... Respondents

::JUDGMENT::

Counsel for the appellant-petitioner: Shri C. Raghu

Counsel for respondent Nos.1, 2 and 4: Government Pleader for Endowments

Counsel for respondent No.3: Shri Satyanarayana Nimmagadda

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November 20, 2006

Per G.S. Singhvi, CJ

Although the case has been listed today for consideration of the appeal preferred by the writ petitioner – Smt. Maddineni Rathamma against order dated 23-10-2006 passed by the learned Single Judge whereby he vacated ad-interim order dated 11-9-2006, with the consent of the learned counsel for the parties, we have sent for the record of Writ Petition No.18731 of 2006, directed the Registry to list the writ petition before the Division Bench and are disposing of the same along with the writ appeal.

In the writ petition filed by her, the petitioner has prayed for quashing order dated 26-8-2006 passed by Regional Joint Commissioner, Guntur Zone, Endowments Department, Guntur (respondent No.1) under Section 92 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, 'the Act') whereby he annulled order dated 1-8-2003 passed by Assistant Commissioner, Endowments Department, Ongole (respondent No.2) in Rc.No.B4/3046/2003.

The case set up by the petitioner is that her husband had

been cultivating land measuring Ac.2-96 cts. comprised in Survey No.333, which was owned by Sri Venugopalaswamy Temple, Ponduru Village, Tanguturu Mandal, Prakasam District; that after the death of her husband, she has been cultivating the land; that pursuant to notice issued by respondent No.2 under Rule 5 (1) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Leave of Agricultural Lands Rules, 2003 (for short, 'the Rules'), she submitted property certificate, small farmer certificate issued by Gram Panchayat and Death Certificate of her husband; that after considering her application, respondent No.2 passed order dated 1-8-2003 whereby he declared her as a small farmer under Rule 3 of the Rules; that after more than three years, respondent No.1, in the purported exercise of the power vested in him under Section 92 of the Act, arbitrarily cancelled order dated
1-8-2003. The petitioner pleaded that respondent No.1 did not have the jurisdiction to initiate proceedings under Section 92 and, in any case, he could not have annulled order dated 1-8-2003 after a gap of more than three years and that too without assigning cogent reasons.

While issuing notice of the writ petition, the learned Single Judge directed the parties to maintain status quo, but after hearing the arguments of both the parties, he vacated the ad-interim order. This impelled the petitioner to file appeal under Clause 15 of the Letters Patent in which she has prayed for setting aside order dated 23-10-2006 passed by the learned Single Judge and for restoration of the order of status quo.

Shri C. Raghu, learned counsel for the petitioner argued that order dated 28-6-2006 passed by respondent No.1 is liable to be quashed because he did not have the jurisdiction to initiate action under Section 92 of the Act and that too after a gap of almost three years. He further argued that nobody had filed appeal against order dated 1-8-2003 passed by respondent No.2 within the period of limitation specified in Rule 4 of the Rules and, therefore, respondent No.1 could not have taken suo motu cognizance after lapse of almost three years. Another contention urged by the learned counsel is that even though the petitioner had raised several objections to the suo motu exercise of power by respondent No.1 including the one that he could not have invoked the provisions of Section 92 of the Act, the latter did not consider the same and arbitrarily cancelled the order passed by respondent No.2 by taking into consideration irrelevant and extraneous factors.

Learned Government Pleader for Endowments fairly admitted that the order passed by respondent No.1 does not reflect consideration of the objections taken by the petitioner to the jurisdiction of respondent No.1 to initiate proceedings under Section 92, but Shri Satyanarayana Nimmagadda appearing for respondent No.3 defended the order of respondent No.1 by arguing that the decision taken by respondent No.2 to declare the petitioner as landless poor was tainted by arbitrariness. Learned counsel emphasized that the petitioner had concealed the facts relating to land owned by her and the income derived by her son and, therefore, the order passed by respondent No.1 may not be

disturbed.

We have considered the respective submissions. In our opinion, it is not necessary to deal with and decide the objections raised by the petitioner to the jurisdiction of respondent No.1 to suo motu initiate proceedings under Section 92 of the Act because after carefully scrutinizing the record, we are convinced that the order dated 28-6-2006 is liable to be set aside only on the ground that respondent No.1 did not advert to and decide the objections raised by the petitioner to his jurisdiction to invoke Section 92 of the Act for cancellation of order dated 1-8-2003. Before adversely pronouncing on the status of the petitioner as a landless poor person, respondent No.1 was duty bound to consider the objections raised by her and decide the same by recording reasons, howsoever briefly, and his failure to do so has resulted in miscarriage of justice.

For the reason aforestated, the writ petition is allowed. Order dated 28-6-2006 passed by respondent No.1 is quashed with the direction that the said respondent shall, after hearing the petitioner or her representative, pass fresh order within a period of two months from the date of receipt of a copy of this order. It is expected that respondent No.1 will objectively consider the objections raised by the petitioner to his jurisdiction to initiate action under Section 92 as also the merits of the case and decide the same by assigning cogent reasons. For facilitating early adjudication of the matter, we direct the parties to appear before respondent No.1 on 15-12-2006.

As a sequel to disposal of the writ petition, Writ Appeal

No.1230 of 2006 filed by the writ petitioner for setting aside order dated 23-10-2006 of the learned Single Judge and WAMP No.2548 of 2006 filed by her for interim relief are disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

November 20, 2006

svs